

The Human Rights Act 1998

The Human Rights Act has incorporated the European Convention of Human Rights in to UK law. This could potentially have an enormous effect on the development of case law in the UK. From now on, wherever possible, courts must interpret both existing and future legislation so as to be compatible with articles of the convention. This could involve altering the current interpretation of legislation so as to make it compatible with articles of the convention. If the courts are unable to do this, then they must enforce the legislation anyway and issue a “declaration of incompatibility” that it is inconsistent with the ECHR. But most commentators agree that judges will be reluctant to do this, and more inclined to interpret the law so as to be consistent.

The act could therefore have a big influence on future judicial interpretation of public order law. Articles 10 and 11 of the ECHR assert the rights of everyone to freedom of expression and freedom of assembly respectively. These are not unlimited rights, of course, and the state may impose restrictions on them for the prevention of crime, public disorder etc. But these restrictions imposed have to be proportional to the objective being sought ie public disorder, crime. Anyone who goes on animal rights demos these days will be wearily familiar with the Section 12 and 14 orders which the police routinely use to control marches and assemblies. This legislation in itself is not incompatible with the ECHR. It is supposedly designed to balance the rights of protestors to demonstrate with the rights of others to go about their normal business and to be protected from crime. But nowadays the police are clearly abusing their powers under Section 14, so as to negate entirely the effect of a demonstration. If you can show this to be the case then you can use it as a defence when charged with breaching a Section 12 or 14 order, namely that the order was unlawful. You can also use the act as a basis for suing the police.

Suing the Police

Before the passing of the HRA, it was much harder to assert your European Rights. If you wanted to sue the police for infringement of your ECHR rights, you had to go to the European court in Strasbourg – a lengthy and time-consuming experience. Now the Act has “brought the ECHR home”, and you can sue the police in the county courts and the High Court. Section 6 of the Act states that it is unlawful for a public authority to act in a way, which is incompatible with a convention right. Public authorities include both the courts and the police. So if a police officer acts in a way, which is incompatible with a convention right, you can sue them for breach of Section 6 of the Act. And this also imposes an obligation on the courts themselves to develop the law consistently with the convention.

This now gives us a powerful tool against the police. Most of them don’t understand the new law, and probably don’t even realise that it is now unlawful for them to act in a way, which is incompatible with a convention right. On demonstrations always let the police know that that you know they are obliged by law to respect your convention rights. The police will often back down when confronted by someone who clearly knows the law better than they do, especially if you are videoing them at the same time. Good instances of when to quote the convention are when the police are threatening to make arrests for obstruction of the highway or under Section 5 of the Public Order Act 1986.